

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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Legislation Title:

AN ORDINANCE relating to taxation; adopting amendments to the model business license tax ordinance; amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the taxation of digital products by local jurisdictions; and amending sections in chapters 5.30 and 5.45 of the Seattle Municipal Code.

Summary of the Legislation:

This legislation amends Title 5 of the Seattle Municipal Code (SMC) to comply with amendments completed in October to the Municipal Tax Model Ordinance (Model Ordinance). The Model Ordinance was amended by the Association of Washington Cities (AWC), due to changes in State law and the need to clarify definitions and deductions. The Model Ordinance was last amended in 2008, at which time legislation was passed to amend the SMC.

The proposed amendments includes a revised definition of digital goods, and incorporates the sale of digital goods within the retail B&O tax definition; provides allocation criteria for the sale of digital goods; places a limitation on the first mortgage interest deduction; makes technical corrections to the Insurance exemption; and makes technical corrections to the definition of engaging in business as it relates to members of governing boards.

This proposed legislation adopts the updates to the Model Ordinance, thereby ensuring that the City's business and occupation tax complies with State law. The City of Seattle, in order to comply with State law as it is changed, notifies tax payers of any adjustments to Seattle Business and Occupation tax and updates the revenue forecast to reflect any revenue implications.

Background:

In 2003, the Washington State Legislature enacted RCW Chapter 35.102, which states all cities who levy a business and occupation tax adopt appropriate municipal code authorizing that the taxes complies with the mandatory components of the Model Ordinance. The Model Ordinance provides the basic framework for the cities including definitions and methods of allocating and apportioning income. The Model Ordinance is amended periodically to reflect changes in State law or relevant court rulings, and cities must ordain these amendments after they are completed.

Following are the changes implemented in the October 2012 Model Ordinance:

Digital Goods (Sections 1, 3, 4, 5, 6 & 7):

In 2009, the State of Washington defined digital goods and included the sale of digital goods within the definition of a retail sale. This changed the retail definition in the Model Ordinance mandatory provision due to RCW 35.102, where the State of Washington definition of a retail

sale is to be used as the baseline definition for the model ordinance B&O retail sale definition. The Model Ordinance B&O cities, along with AWC, proactively worked with the State of Washington's Department of Revenue (DOR) to synchronize the tax base and cooperated with DOR to encourage the legislature to amend RCW 35.102 to ensure the digital goods retail sourcing was aligned at the local and State levels.

The change to the definition of a retail sale did change the tax classification used for collecting B&O and sales tax on digital goods. The adoption of these changes by taxpayers occurred in 2009; the fiscal implications were built into the city's revenue forecasts as part of the sales tax and B&O tax revenue assumptions.

Members of Governing Boards (Section 2):

In 2010, The State of Washington adopted legislation (Second Engrossed Substitute Senate Bill 6143, Part VII -- Chapter 23, Laws of 2010 1st Special Session) to clarify the definition of engaging in business for individuals who serve on governing boards. This change was effective July 1, 2010. The Association of Washington B&O cities amended the Model Ordinance mandatory provision for members of governing boards to align the definition of engaging in business with the State of Washington's definition. The definitions make clear governing board members are independent contractors and are subject to securing a business license and subject to the B&O tax.

Insurance Industry (Section 8):

In 2008, the State of Washington amended certain terms contained in RCW 48.14 relating to the Insurance Industry. The Association of Washington B&O cities amended the Model Ordinance to align the terminology contained within the Model Ordinance Insurance exemption with the State of Washington's terminology. Insurance Broker and Insurance agent designations were changed to Insurance Producer and Appointed Insurance producer designations.

First Mortgage Deduction (Section 9):

In 2012, the State of Washington limited the B & O tax deduction for income derived from first mortgage interest to financial institutions operating in ten or fewer states. As this was a change to State law which affects the Model Ordinance, the Municipal B & O tax cities are required to comply with RCW 82.14A, license fees or taxes on financial institutions. This change amends the City's deduction for first mortgage interest deduction to comply with State law and remain consistent with the Model Ordinance.

The City must amend its code to enact these changes to the Model Ordinance effective January 1, 2013.

Please check one of the following:

X **This legislation does not have any financial implications.**

_____ **This legislation has financial implications.**

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

Digital Goods (Sections 1, 3, 4, 5, 6 & 7): The fiscal impact of this change has been incorporated into the B&O tax revenue forecast.

First Mortgage Deduction (Section 9): The fiscal impact of this change has been incorporated into the B&O tax revenue forecast.

b) What is the financial cost of not implementing the legislation? State Law requires that these changes to our municipal code be implemented.

c) Does this legislation affect any departments besides the originating department? No

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives? N/A

e) Is a public hearing required for this legislation? No

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation? No

g) Does this legislation affect a piece of property? No

h) Other Issues:

List attachments to the fiscal note below: N/A